# Exhibit A

# UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

REGINALD EDWARDS,

Plaintiff,

v. Case No. 1:19-cv-02134

CHECKR, INC. Honorable Ronald A. Guzman

# DECLARATION OF PREETHI BHANSALI IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISS THE CASE

I, Preethi Bhansali, pursuant to 28 U.S.C. § 1746, declare as follows:

Defendant.

- 1. The information stated below is based upon my personal knowledge and/or was gathered at my direction from company records. If called upon I could and would testify as to its accuracy.
- 2. I was hired by Checkr, Inc. ("Checkr") on May 1, 2017. I am currently employed by Checkr in the position of Director of Operations and have held that position since May 1, 2017.
- 3. Checkr provides certain services as a consumer reporting agency including, at the request of its customers, preparing consumer reports on individuals for employment purposes, as defined under the Fair Credit Reporting Act ("FCRA").
- 4. In my position as Director of Operations, I am familiar with Plaintiff Reginald Edwards's consumer file, Checkr's Applicant Portal, Checkr's current version of its Terms of Service effective March 22, 2018 ("TOS"), and the implementation of Checkr's binding Arbitration Provision ("Arbitration Agreement") contained in the TOS for individuals like Plaintiff who use Checkr's services.

- 5. In 2018, Checkr prepared background reports on Plaintiff at the request of Uber, with whom Plaintiff was seeking engagement. In connection with those background reports, Plaintiff subsequently contacted Checkr through its Applicant Portal to take advantage of Checkr's services. Plaintiff was presented with Checkr's TOS. The TOS govern all aspects of a user's access to and use of Checkr's services. These services include obtaining, delivering and managing background reports and related documentation; obtaining status information regarding background reports; Checkr's processes for generating background reports and resolving potential inaccuracies; requesting a copy of a consumer file; and any disputes relating to a background check. Checkr users can take advantage of the aforementioned services without use of the Applicant Portal, for example, by calling and emailing Checkr to request such services.
- 6. Checkr users like Plaintiff agree electronically to the TOS on Checkr's website by clicking a box, specifying that "By checking this box, I agree to Checkr's Terms of Service (set forth above)[.]" A true and correct copy of the screen that users like Plaintiff see when they agree electronically to the TOS through Checkr's Applicant Portal and click the aforementioned box is attached as Exhibit 1. This is the same screen that Plaintiff would have seen when he agreed electronically to the TOS in August 2018.
- 7. On August 21, 2018, Plaintiff consented electronically to the TOS. Checkr receives and records, among other things, the date, time and IP Address from which a user like Plaintiff agreed to the TOS. A true and correct copy of Checkr's TOS containing the Arbitration Agreement signed by Plaintiff and reflecting the date, time and IP Address from which Plaintiff agreed to the TOS is attached as Exhibit 2.
- 8. Section 14H of the TOS contains an opt-out provision allowing individuals like Plaintiff to opt-out of arbitration altogether by sending written notice (by either email or U.S. mail)

to Checkr within 30 days of agreeing to the TOS. Checkr has no record of having received any such written notice of opt-out from Plaintiff at any time after August 21, 2018.

I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of May, 2019 in San Francisco, CA.

frutu Buansali

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# EXHIBIT 1

# Checkr Applicant Portal

FAQ About us

Checkr.com

Before proceeding, please read through Checkr's Terms of Service below and click the checkbox to acknowledge your agreement.

Terms of Service

#### **TERMS OF SERVICE**

Checkr, Inc.

Effective Date: March 22, 2018

IMPORTANT NOTICE: THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION AND CLASS ACTION WAIVER. IT AFFECTS YOUR LEGAL RIGHTS UNLESS YOU OPT OUT, AS DETAILED IN THE ARBITRATION AND CLASS ACTION WAIVER SECTION BELOW. PLEASE READ CAREFULLY.

Checkr, Inc. (also referred to as "Checkr," "we," "us," or "our") provides the content and services available on the website of Checkr, Inc. (the "Site"). Except as expressly provided herein, these Terms of Service ("Terms") contain the terms and conditions that govern your access to and use of the services, including those available on and through the Site and other websites offered by Checkr, its affiliates and partners, including but not limited to: obtaining, delivering, and managing background reports and related documentation; obtaining status information regarding background reports: Checkr's processes for generating background

■ By checking this box, I agree to Checkr's Terms of Service (set forth above), as well as Checkr's Privacy Policy.

Continue

Charles

# EXHIBIT 2

#### **TERMS OF SERVICE**

Checkr, Inc.

Effective Date: March 22, 2018

IMPORTANT NOTICE: THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION AND CLASS ACTION WAIVER. IT AFFECTS YOUR LEGAL RIGHTS UNLESS YOU OPT OUT, AS DETAILED IN THE ARBITRATION AND CLASS ACTION WAIVER SECTION BELOW. PLEASE READ CAREFULLY.

Checkr, Inc. (also referred to as "Checkr," "we," "us," or "our") provides the content and services available on the website of Checkr, Inc. (the "Site"). Except as expressly provided herein, these Terms of Service ("Terms") contain the terms and conditions that govern your access to and use of the services, including those available on and through the Site and other websites offered by Checkr, its affiliates and partners, including but not limited to: obtaining, delivering, and managing background reports and related documentation; obtaining status information regarding background reports; Checkr's processes for generating background reports and resolving potential inaccuracies; requesting a copy of your consumer file; and/or any disputes relating to your background check (collectively, the "Services"). Your access to, review of, and/or use of the Services is conditioned on your acceptance of and compliance with these Terms.

PLEASE NOTE: SECTION 14 OF THIS AGREEMENT GOVERNS HOW DISAGREEMENTS AND CLAIMS BETWEEN YOU AND CHECKR CAN BE RESOLVED. THIS SECTION, WITH LIMITED EXCEPTION, REQUIRES YOU AND CHECKR TO SUBMIT CLAIMS AGAINST EACH OTHER TO BINDING AND FINAL ARBITRATION.

You must be 18 years old or the age of majority in your jurisdiction in order to generate a background check and use the Services on our Site. If you are under 18 years old or the age of majority in your jurisdiction, then you may not use the Services on our Site. If you are under 13 years old, this Site is not directed to children under 13 years old, and you may not provide personal information to us, make a purchase on the Site, or register on the Site.

By checking the box below and accessing the Services, you agree to be bound by these Terms and our Privacy Policy, as may be updated from time to time, ("Privacy Policy"), which is incorporated into these Terms by reference. **IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT USE OR ACCESS OUR SITE.** 

We reserve the right, in our sole discretion, to change and revise these Terms at any time by posting the changes on the Site. Any changes are effective immediately upon posting to the Site. The most current version will be available on our website, and the Effective Date of the current version is at the top of this page. By continuing to access or use the Services after those revisions become effective, you agree to be bound by the revised Terms, except as provided in the Arbitration and Class Action Waiver section below. We may, with or without prior notice, terminate any of the rights granted by these Terms and Conditions. We will

provide you with any additional notices or choices with respect to such changes as required by applicable law.

### 1. Customers, Users and Use of Services

These Terms apply to any and all Checkr customers and users of Checkr's Services, including but not limited to individuals, small and large businesses, and nonprofit organizations, who utilize the Services ("Customers," "you," or "your"), as well as all others who access the Services, including but not limited to website visitors and users of affiliate websites which allow access to Checkr Services ("Users," "you," or "your") including each User's heirs, assigns and successors. If you use the Services on behalf of a business entity, you represent and warrant that you have the authority to bind that entity, your acceptance of the Terms will be deemed an acceptance by that entity, and "you" and "your" herein shall refer to that entity.

Subject to the age restrictions outlined above, you may be able to submit information to us through your use of the Services. You agree to provide us with accurate information about yourself, including any information you may submit for background checks conducted about or requested by you. You further agree that your submission of such information is subject to our Privacy Policy.

In the Services, you may authorize Checkr and third-party partners to obtain background reports about you (also known as consumer reports or investigative consumer reports) from Checkr. If you provide such authorization, you understand and agree that 1) the party you authorize may obtain information about your character, general reputation, personal characteristics, and/or mode of living, which can involve personal interviews with sources such as your neighbors, friends, or associates; 2) reports may include checks regarding your criminal history, credit history, eviction records, social security trace, motor vehicle records ("driving records"), drug screening, verification of your education or employment history or other background checks; and 3) any law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, employer, or insurance company may furnish any and all background information requested by Checkr.

By accessing or using the Services, you represent and warrant you shall comply with all applicable federal and state law, including but not limited to the Fair Credit Reporting Act and the Equal Employment Opportunity Act.

To the extent these Terms conflict with our Services Agreement, the Services Agreement governs. If you enter into an agreement with Checkr providing different or additional terms regarding Checkr's Services and there is a conflict between a provision in these Terms and a provision in such agreement, the latter takes precedence with respect to the provision in conflict.

# 2. Your Account

You may need to register an account with Checkr in order to utilize the Services, including access to the background check platform offered by Checkr to obtain background reports on consumers. You are responsible for maintaining the confidentiality of your account, username, and password and for restricting access to your computer. If there has been unauthorized use

of your password or account, please notify us immediately. You are responsible for providing and maintaining current, complete, accurate and truthful information on your account. You agree to accept responsibility for all activities that occur with your permission or authorization under your account, username and/or password. If you are accessing and using the Site and Services on someone else's behalf, you represent that you have the authority to bind that person as the principal to all Terms provided herein, and to the extent you do not have such authority you agree to be bound to these Terms and to accept liability for harm caused by any wrongful use of the Site or Services resulting from such access or use. We reserve the right to refuse service and/or terminate accounts without prior notice if these Terms are violated or if we decide, in our sole discretion, that it would be in our best interest to do so.

# 3. Intellectual Property and Limited License

All intellectual property rights in connection with the Site and Services shall be owned by Checkr absolutely and in their entirety. These rights include database rights, patents, copyrights, trademarks (whether registered or unregistered), trade dresses, trade secrets, design rights (whether registered or unregistered) know-how, mask works, moral rights, and all similar rights that may exist now or later in any jurisdiction, including without limitation any applications and registrations for the foregoing, and the Checkr name, logos, designs, domain names, graphics, icons, scripts, service marks, features, functions, text, graphics, button icons, scripts, service marks, images, software, data compilations and other distinctive brand features, and the compilation and organization thereof (collectively, "Intellectual Property Rights").

All such Intellectual Property Rights are and will remain the exclusive property of Checkr and its subsidiaries, affiliates, partners and licensors, and are protected by United States and international laws, including laws governing copyrights and trademarks. And except as explicitly provided herein, or as required under applicable law, nothing in these Terms gives you a right to use the Intellectual Property Rights, and neither the Services nor any portion of the Site may be used reproduced, duplicated, copied, sold, resold, accessed, modified, or otherwise exploited, in whole or in part, for any purpose without our express, prior written consent.

Subject to these Terms, Checkr grants you a worldwide, limited, revocable, non-exclusive license to access and use the Site and Services as they are provided to you by Checkr for your personal, noncommercial use only. The License is non-transferable and non-assignable, and you shall not grant to any third party any right, permission, license or sublicense with respect to any of the rights granted hereunder without Checkr's prior written permission, which it may withhold in its sole discretion. You acknowledge that Checkr is the owner and licensor of the Intellectual Property Rights and that your use of the Intellectual Property Rights.

Please be advised that all aspects of the Services are subject to change or termination at Checkr's sole discretion. Violation of any provision of this License may result in immediate termination of the License, in Checkr's sole discretion.

## 4. Copyright Infringement Notices

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We respect the intellectual property of others and require that Customers and Users of the Site do the same. We also maintain a policy that provides for the termination in appropriate circumstances of the Site's use of privileges of users who are repeat infringers of intellectual property rights. Consistent with the Digital Millennium Copyright Act, if you believe that copyrighted materials have been copied in a way that constitutes copyright infringement, please send an e-mail or written notice to our Designated Agent for notices of infringement and provide the following:

- A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright interest that you claim is infringed;
- Identification of the copyrighted work(s) that you claim has been infringed;
- A description of the material that you claim is infringing and the location of that material on the Site;
- Your address, telephone number and email address;
- A statement by you that you have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Our Designated Agent for notice for claims of copyright infringement is InCorp Services, Inc., 5716 Corsa Ave Suite 110 Westlake Village, CA 91362-7354; Phone at (800) 246-267; Email at support@incorp.com.

#### 5. User Content

We may, in our sole discretion, permit you to post, upload, publish, submit or transmit content through the Services ("User Content"). You hereby grant Checkr a perpetual, worldwide, irrevocable, unrestricted, non-exclusive, royalty-free license to use, copy, license, sublicense, display, adapt, distribute, display, publicly perform, reproduce, transmit, modify, edit and otherwise exploit such User Content throughout the world to provide the Services and for the purposes for which you submit such User Content, including for Checkr to transmit dispute or rehabilitation information to third parties who have requested background reports about you. You acknowledge and agree that you are solely responsible for all User Content that you submit through the Services.

You represent and warrant that you either are the sole and exclusive owner of all User Content that you submit or you control all rights, licenses, consents and releases that are necessary to grant to Checkr the rights in such User Content, as contemplated under these Terms. You agree not to engage in or assist or encourage others to engage in transmitting, uploading, posting, publicizing, submitting, e-mailing, sharing, distributing, reproducing, or otherwise making available User Content (or any portion thereof) that (a) is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable; (b) you do not have a right to make available under any law or under contractual or fiduciary relationships; (c) is known by you to be false, fraudulent, inaccurate or misleading; (d) you were

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compensated for or granted any consideration for by any third party; or (e) will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

Checkr is in no way responsible for examining or evaluating User Content, nor does Checkr assume any responsibility or liability for the User Content. Checkr does not endorse or control the User Content transmitted or posted on the Site or through the Services, and therefore, Checkr does not guarantee the accuracy, integrity or quality of User Content. You understand that by using the Site and Services, you may be exposed to User Content that is offensive, indecent or objectionable to you. Under no circumstances will Checkr be liable in any way for any User Content, including without limitation, for any errors or omissions in any User Content, or for any loss or damage of any kind incurred by you as a result of the use of any User Content transmitted, uploaded, posted, e-mailed or otherwise made available via the Site. You hereby waive all rights to any claims against Checkr—including but not limited to any alleged or actual infringements of any proprietary rights, rights of privacy and publicity, moral rights, and rights of attribution—in connection with User Content.

You acknowledge that Checkr has the right (but not the obligation) to refuse to post or remove any User Content and Checkr reserves the right to change, condense, or delete any User Content. Without limiting the generality of the foregoing or any other provision of these Terms, Checkr has the right to remove any User Content that violates these Terms or is otherwise objectionable and Checkr reserves the right to refuse service and/or terminate accounts without prior notice for any users who violate these Terms or infringe the rights of others.

#### 6. Use Restrictions

You represent and warrant that you will not do or attempt to do or cause any third party to do or attempt to do any of the following in connection with your use of the Site or Services:

**A.** use, or attempt to use, the Site or Services for unauthorized purposes (e.g. to obtain information related to background checks on someone other than you or to request an unauthorized background check);

**B.** use the Site or Services for the benefit of any third party without Checkr's prior written permission;

- **C.** (i) copy, distribute, rent, lease, lend, sublicense or transfer the Services, or make the Services available to any third party, including your affiliates, parents or subsidiaries, without Checkr's express prior written consent; (ii) modify, decompile, reverse engineer, or disassemble the Site or Services or otherwise attempt to discover any underlying source code, ideas, algorithms, file formats or programming interfaces; (iii) create derivative works based on the Services; (iv) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on the Services; or (v) use the Services to develop a competitive product offering;
- **D.** use any meta tags, "hidden text," agents, robots, scripts, spiders, crawlers or other tools or means, whether manual or automated, to collect, scrape, index, mine, republish, redistribute, transmit, sell, license, download, access or manage the Services, Site (except caching or as

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necessary to view the Site), or the personal information of others without Checkr's prior written permission or authorization;

- **E.** access the Site or Services for improper, illegal, or unauthorized purposes, including, but not limited to, in violation of the Fair Credit Reporting Act, Civil Rights Act, or Equal Employment Opportunity Act;
- F. misrepresent yourself, your identity, or information about you;
- **G.** take any action that (i) may unreasonably encumber the Services' infrastructure; (ii) bypasses measures that are used to prevent or restrict access to the Services; (iii) circumvents, disables, or otherwise interferes with security features of the Services; (iv) distribute, transmit, upload, post, e-mail, share, distribute, reproduce, or otherwise make available any software viruses, malware, program, code, file, or other technology or material intended to interrupt, disrupt, alter, destroy, or limit any part of the Site or Services, or that may harm Customers or Users; or (v) use the Site or Services in a way that violates any of the Intellectual Property Rights, or other rights of any third party, including privacy or publicity rights, or take any action that would jeopardize or impair Checkr's rights as owner of the Intellectual Property Rights or the legality and/or enforceability of the Intellectual Property Rights, including challenging or opposing Checkr's ownership in the Intellectual Property Rights;
- **H.** use the Site or Services for any reason not explicitly authorized by these Terms;
- I. frame or utilize framing techniques to enclose the Site or any portion thereof;
- J. intentionally violate any applicable local, state, national, or international law; and/or
- **K.** attempt to indirectly undertake any of the foregoing.

Notice of Penalty under the Fair Credit Reporting Act ("FCRA"): THE FCRA PROVIDES THAT ANY PERSON WHO KNOWINGLY AND WILLFULLY OBTAINS INFORMATION ON A CONSUMER FROM A CONSUMER REPORTING AGENCY UNDER FALSE PRETENSES SHALL BE FINED UNDER TITLE 18 OF THE UNITED STATES CODE OR IMPRISONED NOT MORE THAN TWO YEARS, OR BOTH.

#### 7. Feedback

By sending us any feedback, comments, questions, or suggestions concerning Checkr or our Services (collectively, "Feedback"), you represent and warrant (a) that you have the right to disclose the Feedback, (b) that the Feedback does not violate the rights of any other person or entity, and (c) that your Feedback does not contain the confidential or proprietary information of any third party or parties. By sending us any Feedback, you further (i) agree that we are under no obligation of confidentiality, express or implied, with respect to the Feedback, (ii) acknowledge that we may have something similar to the Feedback already under consideration or in development, (iii) grant us an irrevocable, non-exclusive, royalty-free, perpetual, worldwide license to use, modify, prepare derivative works, publish, distribute and sublicense the Feedback, and (iv) irrevocably waive, and cause to be waived, against Checkr and its users any claims and assertions of any moral rights contained in such Feedback. This Feedback section shall survive any termination of the Services.

# 8. Authorization for Background Check & Certain Rights Under the FCRA

The Services may allow you to request a copy of your background check or background reports about you. By requesting a copy, you authorize Checkr and its contractors/providers to use the information you provide to us for purposes of conducting background checks and producing reports for you. You agree that Checkr has no obligation to monitor or edit the information you submit to us, and that you are solely responsible for the completeness and accuracy thereof. In connection with conducting background checks, Checkr may collect certain data including, without limitation, DMV records, criminal records, and other publicly available information. Checkr shall treat such data in accordance with our Privacy Policy.

By requesting a copy of your background check, you further acknowledge receipt of and certify that you have reviewed and fully understand the following three statutory notices:

Summary of Your Rights Under the Fair Credit Reporting Act (16 C.F.R. Part 601) located at http://files.consumerfinance.gov/f/201504\_cfpb\_summary\_your-rights-under-fcra.pdf

Remedying the Effects of Identity Theft located at http://files.consumerfinance.gov/f/201410\_cfpb\_summary\_remedying-the-effects-of-id-theft-fcra.pdf

Notice to Users of Consumer Reports (16 C.F.R. Part 601) located at https://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-part1022-appN.pdf

Nothing in these Terms shall affect your right: a) access certain information in your file by contacting us, or b) to notify us and request that we investigate information in your background check that you believe is inaccurate or incomplete, each as provided in 15 U.S.C. §§ 1681c-1, 1681g, and 1681i, of the FCRA.

#### 9. Fees

In connection with your use of the Services, Checkr may charges certain fees ("Fees") such as Fees when you order a background report. You agree to pay all applicable Fees or charges based on the terms then in effect. Once Services have been initiated, Fees are nonrefundable. Charges will appear on your account as "Checkr, Inc. // Checkr.com". Payment processing services provided by our third party payment processor are subject to its terms. All inquiries regarding Services and delivery of reports, including timing or delays, should be made to Checkr at support@Checkr.com.

# 10. Accuracy of Information

We attempt to be as accurate as possible when describing our Services on the Site; however, we do not warrant that the content available on the Site is accurate, complete, reliable, current, or error-free. This Site may contain typographical errors or inaccuracies and may not be complete or current. We therefore reserve the right to correct any errors, inaccuracies, or omissions, and to change or update information at any time without prior notice.

#### 11. Warranties and Disclaimers

Each party represents and warrants to the other party that: (i) it has the full power and authority to enter into the terms and conditions of these Terms; and (ii) the Terms constitute a legal, valid and binding obligation.

DISCLAIMER. YOU ACKNOWLEDGE THAT THE SITE AND ITS CONTENT AND SERVICES ARE PRESENTED "AS IS." CHECKR OBTAINS THE INFORMATION IN ITS REPORTS FROM THIRD PARTY SOURCES "AS IS", AND THEREFORE PROVIDES THE INFORMATION TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS. CHECKR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, OR IMPLIED WARRANTIES ARISING FROM THE COURSE OF DEALING OR A COURSE OF PERFORMANCE IN CONNECTION WITH THESE SITE TERMS OR THE SITE OR ITS CONTENT OR SERVICES, INCLUDING BUT NOT LIMITED TO THE ACCURACY, VALIDITY, OR COMPLETENESS OF ANY REPORTS, THAT THE REPORTS WILL MEET YOUR NEEDS, OR WILL BE PROVIDED ON AN UNINTERRUPTED BASIS. CHECKR EXPRESSLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, CHECKR EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE. CHECKR AND ITS SUPPLIERS, LICENSORS, PARTNERS AND SERVICE PROVIDERS DO NOT WARRANT THAT THE FUNCTIONALITY AND INFORMATION PROVIDED BY THE SERVICES WILL BE CORRECT, UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED.

#### 12. Indemnification

You agree to defend, indemnify and hold Checkr, and its subsidiaries, affiliates, partners, licensors, directors, officers, employees, and agents (the "Indemnified Parties") harmless for any damages, losses, judgments, costs, or expenses, including reasonable attorneys' fees, arising from any third party claim, action, or demand (collectively "Claims") arising out of or relating to: (a) your use of the Site, Services or User Content in violation of any law, rule, regulation, or your breach of any covenants, representations or warranties of these Terms; (b) any part of your User Content; or (c) your willful or malicious conduct relating to any violation described in this section. You also agree to indemnify the Indemnified Parties for any loss, damages, or costs, including reasonable attorneys' fees, resulting from your use of software robots, spiders, crawlers, or similar data gathering and extraction tools, or any other action you take that imposes an unreasonable burden or load on our infrastructure.

# 13. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CHECKR AND ITS SUBSIDIARIES, AFFILIATES, PARTNERS, LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS WILL NOT BE RESPONSIBLE OR LIABLE IN CONTRACT, WARRANTY OR IN TORT (INCLUDING NEGLIGENCE) FOR ANY (a) INTERRUPTION OF SERVICES; (b) ACCESS DELAYS OR ACCESS INTERRUPTIONS TO THE SITE; (c) DATA NON-DELIVERY, MISDELIVERY, CORRUPTION, DESTRUCTION, OR OTHER MODIFICATION; (d) LOSS OR DAMAGES OF ANY SORT INCURRED AS A RESULT OF DEALINGS WITH OR THE PRESENCE OF OFF-WEBSITE LINKS ON THE SITE; (e) COMPUTER VIRUSES, SYSTEM FAILURES, OR MALFUNCTIONS WHICH MAY OCCUR IN CONNECTION WITH YOUR USE OF THE

SITE OR SERVICES; (f) ANY INACCURACIES, ERRORS OR OMISSIONS IN CONTENT OR (g) EVENTS BEYOND OUR REASONABLE CONTROL.

FURTHER, CHECKR WILL NOT BE LIABLE IN CONTRACT, WARRANTY, OR IN TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY FOR ANY INDIRECT, PUNITIVE, SPECIAL, RELIANCE, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY KIND (INCLUDING LOSS OF REVENUE OR PROFITS) ARISING OUT OF OR RELATING TO THESE TERMS, THE SITE OR YOUR USE THEREOF, INCLUDING THE USE OR INABILITY TO USE THE SERVICES, OR FOR ANY INFORMATION OBTAINED FROM OR THROUGH THE SERVICES, EVEN IF CHECKR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IN NO EVENT EXCEED THE AMOUNT PAID TO CHECKR OR ITS PARTNERS UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE INITIATION OF ANY CLAIM FOR DAMAGES.

THE LIMITATION OF LIABILITY DESCRIBED ABOVE SHALL APPLY FULLY TO RESIDENTS OF NEW JERSEY. IF ANY PORTION OF THIS SECTION IS HELD TO BE INVALID UNDER THE LAWS OF THE STATE OF NEW JERSEY, THE INVALIDITY OF SUCH PORTION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THE APPLICABLE SECTIONS.

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations above may not apply to you.

#### 14. Arbitration and Class Action Waiver

PLEASE READ THIS SECTION CAREFULLY — IT AFFECTS YOUR LEGAL RIGHTS AND GOVERNS HOW YOU AND CHECKR CAN BRING CLAIMS AGAINST EACH OTHER. THIS SECTION WILL, WITH LIMITED EXCEPTION, REQUIRE YOU AND CHECKR TO SUBMIT CLAIMS AGAINST EACH OTHER TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS, GROUP OR REPRESENTATIVE ACTION IN COURT.

# A. Agreement to Arbitrate

In exchange for the benefits of the speedy, economical, and impartial dispute resolution procedure of arbitration, You and Checkr mutually agree to give up our right to resolve disagreements in a court of law by a judge or jury, and, as described below, agree to binding and final arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, et seq.

You and Checkr agree that this arbitration agreement is governed by the Federal Arbitration Act, and shall survive even after these Terms or any Services terminate.

#### **B.** Claims Covered by Arbitration

Other than the exceptions in Section 14.D, You and Checkr agree that any disagreement, claim, or controversy arising out of or relating in any way to these Terms (including its enforcement, breach, performance, interpretation, validity, or termination), or Your access to and/or use of the Services, or the provision of content, services, and/or technology on or through the Services

(hereinafter, "Claims"), shall be resolved by final and binding arbitration to the fullest extent allowed by law.

# C. Delegation to Arbitrator

If there is a disagreement about the arbitrability of any Claim (including questions about the scope, applicability, interpretation, validity, and enforceability of this arbitration agreement), You and Checkr agree that this threshold disagreement shall be delegated to the arbitrator (not a court) and that the arbitrator shall have initial authority to resolve such threshold disagreements.

## **D. Claims Not Covered by Arbitration**

This arbitration agreement shall not require arbitration of the following types of claims: (1) small claims actions demanding \$10,000 or less brought on an individual basis and within a small claims court's jurisdiction; and (2) applications for provisional remedies, preliminary injunctions, and temporary restraining orders, including those relating to actual or threatened infringement, misappropriation, or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights.

#### **E. Class Action Waiver**

Except as otherwise required under applicable law, You and Checkr agree to bring and resolve any Claims only on an individual basis, and not as a named-plaintiff or class member in any class or representative proceeding. You and Checkr acknowledge and agree that we are each waiving the right to participate as a plaintiff or class member in any purported class action lawsuit, class-wide arbitration, or any other representative proceeding as to all Claims (hereinafter, "Class Action Waiver"). Further, the arbitrator may not consolidate more than one party's claims and may not preside over any class, consolidated, or representative proceeding, unless you and Checkr agree otherwise in writing.

Notwithstanding any other provision of this arbitration agreement or the AAA Rules, specific disagreements about the scope, applicability, enforceability, revocability or validity of this Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. If there is a final determination that the Class Action Waiver is unenforceable as to certain claims brought on a class or representative basis, then those claims shall be severed from any remaining claims and may proceed in court, but the Class Action Waiver shall be enforced in arbitration on an individual basis as to any remaining claims to the fullest extent possible.

## F. Arbitration Rules, Procedures, and Costs

You and Checkr agree that the arbitration shall be administered by the American Arbitration Association ("AAA") before a single arbitrator mutually agreed upon by the parties, and if the parties cannot agree within thirty (30) days after names of potential arbitrators have been proposed, then by a single arbitrator who is chosen by the AAA. The arbitrator will apply the terms of this arbitration agreement and the applicable AAA rules, which are available at www.adr.org or by calling 1–800–778–7879. If You are an individual person, the arbitrator shall

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apply the AAA Consumer Arbitration Rules. If You are not an individual person, but are an entity or company, the arbitrator shall apply the AAA Commercial Arbitration Rules.

If You are an individual person and bring a claim solely for monetary relief of \$10,000 or less: Checkr will agree to pay for any filing, administrative, or hearing fees charged by the AAA. If the arbitrator finds that the substance of Your claim or the relief sought is frivolous or brought for an improper purpose, however, then the allocation of fees will be governed by the AAA Consumer Arbitration Rules.

If You are an individual person and bring a claim for monetary relief exceeding \$10,000: The AAA Consumer Arbitration Rules will govern payment of administrative or hearing fees charged by the AAA, including limiting Your filing fee to \$200. In addition, fee waivers or other forms of cost relief at the arbitrator's discretion may be available. If the arbitrator finds that the substance of Your claim or the relief sought is frivolous or brought for an improper purpose, however, then the allocation of fees will be governed by the AAA Consumer Arbitration Rules.

*If You are not an individual person*: The AAA Commercial Arbitration Rules will govern payment of administrative or hearing fees charged by the AAA.

The arbitrator shall have the power to decide any motions, including dispositive or summary judgment motions, brought by any party to the arbitration. The arbitrator may grant any remedy, relief, or outcome that the parties could have received in court to resolve the party's individual claim, including awards of attorney's fees and costs, in accordance with the law or laws that apply to the Claim. The arbitrator shall provide in writing to the parties the basis for any award or decision. Judgment upon any award rendered in such arbitration will be binding and may be entered in any court with proper jurisdiction.

# **G.** Severability

Except for the Class Action Waiver in Section 14.E, if any clause within this arbitration agreement is found to be illegal or unenforceable, that specific clause will be severed from this arbitration agreement, and the remainder of the arbitration agreement will be given full force and effect.

# H. Opt-out

If you are an individual person, You have the right to opt-out and not be bound by this arbitration agreement by sending written notice to Checkr—clearly indicating your intent to opt out of this arbitration agreement and including the name, phone number, and email address associated with Your account—via email (arbitration@checkr.com) or U.S. Mail (Checkr, Inc., Legal Department, 1 Montgomery Street, Suite 2000, San Francisco, CA 94104). Your opt-out notice must be sent within 30 days of Your agreement to these Terms.

If You do not opt-out of this arbitration agreement within the 30-day period, You and Checkr shall be bound by the terms of this arbitration agreement in full. If You opt-out of this arbitration agreement within the 30-day period, it will not affect any other, previous, or future arbitration agreements that You may have with Checkr.

# I. Pre-Arbitration Notification and Negotiation Process

Prior to initiating an arbitration, You and Checkr each agree to first attempt to negotiate an informal resolution of any Claims covered in Section 14.B. This pre-arbitration negotiation shall be initiated by providing written notice to the other party—including a brief written statement describing the name, address, and contact information of the notifying party, the facts giving rise to the Claim, and the relief requested. You must send such written notice to Checkr via email (legal@checkr.com) or U.S. Mail (Checkr, Inc., Legal Department, 1 Montgomery Street, Suite 2000, San Francisco, CA 94104); Checkr will send such written notice to the email address You have provided to Checkr.

During this pre-arbitration negotiation, all offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, and attorneys are confidential, privileged and inadmissible for any purpose, including as evidence of liability, in arbitration or other proceeding involving the parties.

After a good faith effort to negotiate, if You or Checkr believe a Claim covered in Section 14.B cannot be resolved informally, the party intending to pursue arbitration agrees to notify the other party via email prior to initiating the arbitration. In order to initiate arbitration, a claim must be filed with the AAA and the written Demand for Arbitration (available at www.adr.org) must be provided to the other party, as specified in the AAA Rules.

# 15. Third-Party Links

The Services may contain links to third-party websites, and other resources that are not owned or controlled by Checkr. These links do not imply any endorsement by Checkr or the assumption of any responsibility for any such third-party sites, information, materials, products, or services. If you access a third-party website or resource from the Services, you do so at your own risk, and you understand that these Terms and Checkr's Privacy Policy do not apply to your use of such links. Any contract entered with, and any damages caused by, a third party company will be between you and that company.

You expressly relieve Checkr from any and all liability arising from your use of any third-party website, service, or content. You acknowledge and agree that Checkr is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. You should carefully review the privacy policies and terms and conditions of the third party websites you visit.

#### 16. General

#### A. Governing Law

Except for Section 14, which is governed by the Federal Arbitration Act, these Terms are governed by the laws of the State of California without regard to choice of law rules or principles. The choice of law provision is only intended to specify the use of California law to interpret these Terms and is not intended to create and substantive right to non-Californians to assert claims under California law whether by statute, common law, or otherwise.

#### **B.** Assignment

You may not assign any of your rights or obligations under these Terms without the prior written consent of Checkr. Subject to the foregoing, these Terms inure to the benefit of and is binding on the parties' permitted assignees, transferees and successors. Any attempted assignment in violation of this clause is void.

# C. Integration

You acknowledge and agree that these Terms constitute the parties' complete and exclusive agreement concerning the use of the Site and Services, and supersede and govern any and all prior or contemporaneous proposals, agreements, or other communications relating to the Site and Services.

## D. Force Majeure

Checkr will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, internet or telecommunications failures, shortages of or inability to obtain labor, energy, or supplies, war, terrorism, riot, acts of God or governmental action, acts by hackers or other malicious third parties and problems with the Internet generally, and such performance shall be excused to the extent that it is prevented or delayed by reason of any of the foregoing.

#### E. Miscellaneous

The parties are independent contractors. Nothing contained in these Terms shall be construed as creating any employment, agency, partnership, franchise, joint venture, or other form of joint enterprise or authority to bind the other party. There are no third-party beneficiaries to these Terms. If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provisions essential purpose. Any waiver of a provision of these Terms will only be valid if provided in writing and applies only to the specific occurrence so waived. Failure to enforce any provision will not constitute a waiver. Nothing in these Terms will limit a party's ability to seek equitable relief. Section headings are not to be used in the interpretation hereof. The following Sections survive any expiration or termination of these Terms: 2-3, 5, and 8-13.

# 17. Notices and Consent to Receive Notices Electronically

You consent to receive any agreements, notices, disclosures and other communications (collectively, "Notices") to which these Terms refer from us electronically including without limitation by e-mail or by posting notices on this Site. You agree that all Notices that we provide to you electronically satisfy any legal requirement that such communications be in writing.

Unless otherwise specified in these Terms, all notices under these Terms will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed,

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if transmitted by facsimile or email; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.

Written notice may be sent via first-class mail to CHECKR LEGAL DEPARTMENT, 1 MONTGOMERY STREET, SUITE 2000, SAN FRANCISCO, CA 94104 or via email to legal@checkr.com. You agree that we may send notices to you regarding your use of the Site by means of electronic mail, a general notice posted on the Site, or by written communication delivered either by overnight courier or U.S. mail to your email or mailing address as appearing in our records from time to time.

Accepted by Reginald Washington Edwards at 2018-08-21T15:52:42Z

IP Address: 108.162.216.83

User Agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 10\_13\_4) AppleWebKit/605.1.15 (KHTML, like

Gecko) Version/11.1 Safari/605.1.15

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